



W.P.No.19609 of 2021

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.09.2023

CORAM:

THE HONOURABLE MR.JUSTICE J. SATHYA NARAYANA PRASAD

W.P.No.19609 of 2021
and WMP.No.20900 of 2021

P. Sreemathi

... Petitioner

Vs.

1. The Chairman
Chennai Port Trust,
Chennai.

2. Senior Accounts Officer (Pension)
Chennai Port Trust,
Chennai.

... Respondents

PRAYER : Writ Petition filed under Article 226 of Constitution of India, seeking Writ of Certiorarified Mandamus to call for the order of the 2nd respondent made in A.O(Pension)/PPO No.15832/2021/F, dated 19.03.2021 and quash the same and further directing the respondents to grant and pay the family pension benefits to the petitioner taking into account of the petitioner's father service in the respondents Port Trust.

For Petitioner : Mr.S.Gopinathan

For Respondents : Mr.Krishna Ravindran



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ORDER

The petitioner has filed the above writ petition praying for a Writ of Certiorarified Mandamus to call for the order of the 2nd respondent made in A.O(Pension)/PPO No.15832/2021/F, dated 19.03.2021 and quash the same and further directing the respondents to grant and pay the family pension benefits to the petitioner taking into account of the petitioner's father service in the respondents Port Trust.

2. The learned counsel for the petitioner submitted that the petitioner's father viz., M.Ponnuswamy worked as Signelman, Traffic Department in the Chennai Port Trust and superannuated in the year 2015 and he also received pension payment order and was receiving monthly pension till his death on 13.11.2015. After the death of the petitioner's father her mother received the family pension as per the nomination facility availed by her father. Unfortunately, the petitioner's mother also died on 21.07.2020 and her father and mother all along took care of her, since she is a permanent locomotor disability from the date of her birth. The Doctors diagnosed and certified her case as Post Polio Residual Paralysis of Right Upper Limb & Left Lower Limb. The percentage of disability was also assessed as 80%.



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3. The learned counsel further submitted that after petitioner's mother death the petitioner sent a representation dated 11.07.2020 to the 1st respondent claiming the family pension to her on the ground that she has 80% disabled person and further unmarried daughter of the deceased employee. As per proviso to Rule 54 (6) (iv) of Central Civil Services Pension Rules, specifically proviso says that "Provided further that if the son or daughter of a Government servant is suffering from any disorder or disability of mind including the mentally retarded or is physically crippled or disabled so as to render him or her unable to earn a living even after attaining the age of twenty five years, the family pension shall be payable to such son or daughter for life subject to the following conditions:-

"As per sub rule iv, there is a condition is imposed that the medical team has to be decided the handicap is of what nature to prevent her from earning her livelihood".

4. The learned counsel for the petitioner further submitted that the case of the petitioner was considered and pass book was issued by the Department for the Welfare of the Differently Abled, Government of Tamil



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Nadu and the Medical Board assessed the disability at 80% and her hands movement is restricted and she could not be in a position to do any work independently even for her routine day to day life she is depending on others. In response to the petitioner's representation to the first respondent dated 11.07.2020, she received a message from them to attend their office and accordingly she also appeared before them and Doctor enquired her and she was informed that they would send a further communication to grant the family pension. The 2nd respondent sent a impugned communication with a wrong pension pay order. When the petitioner again requested them orally to grant the family pension on reconsideration, the 2nd respondent again sent another impugned order but with the correct pension pay order number.

5. The learned counsel for the petitioner further submitted that the impugned order was passed without application of mind and without considering the Central Civil Services Pension Rules and the impugned order has been passed mechanically and deprived the petitioner to get the legally entitled Family Pensionary benefits. Though the petitioner was called for to appear before the respondents for enquiry, no documents were perused and no physical examination was done and sent a communication by saying that the



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petitioner's Right Lower limb and Left Upper limb and Higher functions are normal and she is having the capacity of earning and living. The above findings are without any examination and the same is pre-determined to reject the request of the petitioner and having the medical board pass book with clear findings of 80% disability and the same was not considered by the respondents. Impugned order was passed by the respondents without perusing the medical records submitted by the petitioner.

6. The learned counsel further submitted that when the State as well as Central Governments are enacted laws to safe guard the interest of the disabled persons, the respondents are purposely taking a stand to avoid legally entitled person like the petitioner to grant a family pension, without considering the real nature of disability of the petitioner. If the family pension is granted by the respondents, the petitioner can survive the rest of her life without depending on others and live a respectable life.

7. It is relevant to extract paragraph Nos.6, 7 and 8 of the counter affidavit dated 15.12.2022 filed by the respondents and the same is extracted as below:-



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6. I submit that as per the service records, Late.M.Ponnusamy, Ex-Singalman had declared the following names as his family members at the time of retirement.

S.No	Name	Relationship
1	P.Anandha	Wife
2	P.Paramasivam	Son
S.No.	Name	Relationship
3.	P.Tamilselvi	Daughter
4.	P.Komathy	Daughter
5.	P.Srimathy	Daughter

7. I submit that Rule 54 (6) (iv) of the Central Civil Services Pension Rules, 1972 specifically states “before allowing the family pension for life to any such son or daughter, the appointing authority shall satisfy that the handicap is of such a nature so as to prevent him or her from earning his or her livelihood and the same shall be evidenced by a certificate obtained from a Medical Board comprising of a Medical Superintendent or a Principal or a Director or Head of the Institution or his nominee as Chairman and two other members, out of which at least one shall be a Specialist in the particular area of mental or physical disability including mental retardation setting out, as far as possible, the exact mental or physical condition of the child”.

The rules explicitly states that the Medical examination must be done by the medical panel of the institution and in addition to that the level of disability should be of such nature that prevents his/her from earning



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their own livelihood.

8. I submit that as per the aforesaid Rules, the Medical officer of Chennai Port Trust had examined the petitioner's disability and certified vide A.O.(Pension) / PPO No.15832/2021/F that "her right lower limb and left upper limb and higher functions are normal and hence she can earn her livelihood on her own". It is amply clear that the petitioner's disability is of the nature which does not prevent her from earning a livelihood on her own. On a perusal of the same, it is well established fact that the petitioner's case does not fall under the relevant regulations and therefore it is inappropriate and impermissible for the respondents to sanction family pension under physically handicapped category. Thus, the claim made by the petitioner has been considered appropriately and rejected as per the prevailing policy.

9. Further, there is no proof that right from the time of demise of her mother Smt.Late.Anandha till date, Miss.P.Sreemathy is dependent on her late father's pension and she has not established that she does not have any other source of income for survival. The claim made by the petitioner is therefore unacceptable.

8. Heard both sides and perused the materials available on record.

9. The petitioner is a person with permanent locomotor disability from the date of her birth and Doctors diagnosed and certified that her



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case as Post Polio Residual Paralysis of Right Upper Limb & Left Lower Limb disability and the percentage of disability was assessed as 80% and the certificate of disability dated 17.11.2022 to that effect was also issued by the Senior Resident, Department of Orthopaedics, Government Medical College Omandurar Government Estate, Chennai 2. The Government of Tamil Nadu has issued the permanent pass book of disability dated 17.11.2020 based on the certificate of disability issued by the Medical authority, Department of Orthopaedics, Government Medical College Omandurar Government Estate, Chennai 2 and Rehabilitation Centre, K.K.Nagar, Chennai. The petitioner gave a representation dated 11.07.2020 to the first respondent and in response to the representation the petitioner was called for to appear before the Medical Officer of the respondent trust. According to the counter affidavit filed by the respondents, the petitioner was asked to appear before the Medical Officer of the respondent Trust and she was examined and certified vide A.O. (Pension) PPO No.15832/2021/F that “her right lower limb and left upper limb and higher functions are normal and hence she can earn her livelihood on her own” and the petitioner case does not fall under the relevant regulations and therefore it is inappropriate and impermissible for the respondents to sanction family pension under the



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physically handicapped. Hence the claim of the petitioner has been considered and rejected as per the prevailing policy of the Trust.

10. In this case it is pertinent to note that the disability certificate was issued by the Medical authority, Department of Orthopaedics, Government Medical College Omandurar Government Estate, Chennai 2 and diagnosed the case of the petitioner as Post Polio Residual Paralysis and certified that she has 80% permanent locomotor disability. Then the permanent pass book of disability dated 17.11.2020 was also issued by the Government of Tamil Nadu vide No. SRTC K.K.Nagar(G78) based on the certificate issued by the Medical Authority, Department of Orthopaedics, Government Medical College Omandurar Government Estate, Chennai 2 and as well as Rehabilitation Centre, K.K.Nagar, Chennai. **The certificate of disability was issued by the competent medical authority which says that the petitioner has 80% of locomotor disability and also by the medical authority of Rehabilitation Centre, K.K.Nagar based on which the State of Tamil Nadu has issued the permanent pass book of disability. This being so, this Court is unable to understand how the Medical Officer of the Trust certified that the petitioner disability is of the nature which does not prevent her from**



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earning livelihood on her own and does not fall under the physically handicapped category. It is also pertinent to note that the Government of Tamil Nadu would not have issued the permanent pass book of disability dated 17.11.2020 without verifying the medical certificate / certificate of disability issued by the competent Medical Authority, Department of Orthopaedics, Government Medical College Omandurar Government Estate, Chennai – 600 002 and also by the Rehabilitation Centre, K.K.Nagar, Chennai.

11. There is no certificate issued by the Medical Officer of the Trust to that effect that the petitioner is suffering from 65% disability only and not 80% as certified by the Government of Tamil Nadu.

12. This Court is not inclined to accept the examination done by the Medical Officer of the Trust on the ground that since no medical certificate issued to that effect is submitted by the petitioner nor the respondent. The certificate/permanent pass book of Disability dated 17.11.2020 was based on the Medical Board of the Department of Orthopaedics, Government Medical College Omandurar Government Estate, Chennai - 600 002 and



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also the Government Rehabilitation Centre situated at K.K.Nagar a renowned Institute which is exclusively for examining the Orthopaedics related cases, the nature of the disability and the percentage of the disability suffered by the patients.

13. In view of the above factual matrix of the case, this Court is of the considered view that the impugned order passed by the 2nd respondent in A.O(Pension)/PPO No.15832/2021/F, dated 19.03.2021 is liable to be quashed and the same is hereby quashed.

14. In the result, this writ petition stands allowed and the respondents are directed to grant and pay the family pension benefits to the petitioner taking into account of her father's service in the respondents Port Trust within a period of eight weeks from the date of receipt of a copy of this order. No costs. Consequently connected miscellaneous petition is also closed.

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Index : Yes /No
Speaking/Non speaking order



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To

1. The Chairman
Chennai Port Trust,
Chennai.
2. Senior Accounts Officer (Pension)
Chennai Port Trust,
Chennai.



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J. SATHYA NARAYANA PRASAD, J.

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